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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/738,323 | 12/16/2003 | Richard Boden | IFF-0017 | 7933 |
| 26259 | 7590 | 07/24/2006 | EXAMINER | |
| LICATA & TYRRELL P.C. 66 E. MAIN STREET MARLTON, NJ 08053 | | | GANEY, STEVEN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/738,323

Applicant(s)

BODEN ET AL.

Examiner

Steven J. Ganey

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on May 15 , 2006, which has been fully considered in this action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wefler et al in view of Orson, Sr.

Wefler et al discloses a dispensing device comprising all the featured elements of the instant invention, note active gel col. 4, line 32 and wick col. 4, lines 54-65, except for the specific oil or fragrance present in the active gel in the claimed range be percent weight and the emanator in physical contact with the end of the wick opposite the reservoir. With respect to applicant's statements of intended use, i.e. (for storing an active gel comprising an oil or fragrance present in the active gel at about 90 to 99.8 percent by weight), the apparatus of Wefler et al is capable of performing applicant's intended use and would perform equally as well with the claimed active gel and oil/fragrance percent weight range. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the oil or fragrance in the percent by weight range in the active gel, since it has been held that where the

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general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPW 233. Orson, Sr. discloses a dispensing device comprising an active gel, col. 8, lines 2-37, and a wick with an emanator in physical contact with the wick, col. 6, lines 39-68. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an emanator for the wick of Wefler et al, as taught by Orson, Sr. since with such a modification the addition of the emanator facilitates diffusion of the oil or fragrance into the surrounding environment by the process of evaporation.

As to claim 7, note col. 5, lines 33 and 34 and “p-dichlorobenzene” of Wefler et al.

Response to Arguments

4. Applicant's arguments filed May 16, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments that there would have been no rationale for the skilled artisan to look to Orson, Sr. for an emanator to facilitate diffusion of a fragrance into the atmosphere as the teachings of Wefler et al resolve the issue of facilitating diffusion of an oil or fragrance into the atmosphere by employing a heating element for heat-promotion of the air freshener, note in Orson, Sr. col. 6, lines 41-52, where it is disclosed that the fragrance evaporates and is dispensed by diffusion with or without the assistance of a heating device. Therefore, Orson, Sr. teaches that an emanator and wick combination can be used with a heating device to promote diffusion and therefore shows a teaching and motivation for providing an emanator on a wick in the apparatus of Wefler et al.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M, Tu, W and Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjg

7/12/06



STEVEN J. GANEY
PRIMARY EXAMINER

7/12/06